IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA:

CWP No.299 of 2005

Date of Decision :15.11.2006.

Munshi Ram. …Petitioner.

Versus:

Dr.Y.S. Parmar University and Ors.. .Respondents.

Coram:

The Hon'ble Mr.Justice V.K.Gupta, Chief Justice.

The Hon'ble Mr.Justice Deepak Gupta, Judge.

Whether approved for reporting?[1]

For the petitioner: Mr.K.B.Khajuria, Advocate.

For Respondents 1 & 3. Mr.B.S.Attri, Advocate.

For Respondent No.2 Mr.M.S.Chandel, Advocate General with Mr.J.K.Verma, Dy. Advocate General.

For respondent No.4. Mr.K.S.Banyal, Advocate.

V.K. Gupta, C.J (Oral).

Mr.B.S.Attri submits that respondent No.3 does not want to file any separate reply and he adopts the reply filed by respondent No.1.

Heard learned counsel for the parties.

A communication bearing No.UHF/Reg/Estt-I/8-6/05/-27443-45 dated 15.2.2005 from the Registrar Dr.

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[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

Yashwant Singh Parmar University of Horticulture and Forestry Nauni (Solan) addressed to the Associate Director (R&E), Regional Horticultural Research Station, Bajaura, District Kullu (H.P.) is under challenge in this petition filed under Article 226 of the Constitution of India. By this communication the Registrar, while referring to an order passed on 17.11.2003 by respondent No.2 as well as a letter dated 27.1.2004 from the said respondent, issued a direction to deduct Rs.500/- per month from November, 2003 from the salary of the petitioner. As is being noticed the aforesaid order dated 17.11.2003 was passed by respondent No.2 against the petitioner as well as some other sons of respondent No.4 on a complaint allegedly made by this respondent with respect to her maintenance. The order dated 17.11.2003 passed by respondent No.2 reads thus:

> "Case called. Shri Lekh Ram Sharma son of Smt. Krishni Devi present. Shri Lekh Ram stated that he is bearing all expenses of her mother Smt. Krishni Devi, while his brothers Shri Pritam Chand Sharma who is in HPSEB as Meter Reader posted at Bharari, District Bilaspur, Shri Munshi Ram Sharma who is Clerk in Horticulture Research Station, Bajaura, District Kullu and Shri Jagdish Chand Sharma who is an agriculturist are not paying any money to Smt. Krishna Devi for her livelihood.
>
> The Commission after carefully consideration of the circumstances on record decided that each of brothers of Shri Lekh Ram will send an amount of Rs.500/- amount to their mother with immediate effect. The order may be conveyed to all concerned accordingly."

After passing the aforesaid order the Chairperson of respondent Commission on 27.1.2004 wrote a demi official letter to the Registrar of respondent No.1 University directing him to deduct Rs.500/- from the salary of the petitioner every month and to remit it to respondent No.4. This demi official letter being in Hindi, its English translation is reproduced here in below which reads thus:

> "You are informed that this Commission on the basis of complaint submitted by Smt.Krishni Devi widow of Shri Tihru Ram, resident of Village Bani, Post office Bhapral, Tehsil Ghumarwin, District Bilaspur, H.P. has passed an order on 17.11.2003, the copy of which was sent to Shri Pritam Chand but their mother Smt. Krishni Devi has informed that her sons Sh. Pritam Chand, Munshi Ram and Jagdish Chand Sharma are not paying any expenses.
>
> In view of this a certified copy o order dated 17.11.2003 is annexed herewith for your perusal and you are directed to deduct a sum of Rs.500/- per month from the salary of Sh.Munshi Ram and send to Krishni Devi and the amount due from November, 2003 at the rate of Rs.500/- per month be also recovered and information with regard to sending money be placed before the commission. "

Two issues arise for our consideration in this case. Firstly, did respondent No.2 have any jurisdiction, power or authority to pass an order like the one it did on 17.11.2003 directing the deduction of an amount from the salary of the petitioner and then to follow it up by issuing a direction qua respondent No.1 to actually start the deduction. Secondly, did respondent No.1 itself have no obligation to examine and

consider whether any direction or purported direction issued by respondent No.2 had or did not have any force of law and was it of any binding effect upon it and could it therefore act in pursuance of any such direction to the utter prejudice of the petitioner.

For deciding the first issue we have to have a bare look at the provisions of The Himachal Pradesh State Commission for Women Act, 1996 (1996 Act, for short) under which respondent No.2 Commission has been constituted. Section 10 of 1996 Act deals with the functions of the Commission. Section 11 stipulates that the State Government shall consult the Commission on all major policy matters affecting women. Section 12 lays down, while vesting in the Commission certain powers, that for the purpose of conducting investigations under the 1996 Act it may utilize the services of any officer or investigation agency or any other person. Apart from these Sections, no other provision of 1996 Act deals with or relates to the exercise of any power or the performance of any function by the Commission. Actually Sections 11 and 12, even though have been noticed by us are not relevant for our purpose at all. As far as our purpose is concerned, we have only to examine Section 10 of 1996 Act, which specifically deals with the functions of the Commission. A very close look at Section 10 clearly informs us that most of the functions of the Commission are either social or charitable or at best advisory in nature. In addition to submitting reports to the State Government annually, other functions of the Commission include the tasks of undertaking promotional and educational research, render guidance and advice to

needy women, monitor the progress of the development of women in the State, fund litigation, including police complaints, make periodical reports to the State Government and finance schemes for the consideration of the State Government for more effective implementation of the provisions of the 1996 Act etc. etc. This Section also lays down that the Commission may investigate and examine all matters relating to the safeguards respecting the women as provided under the Constitution of India and other laws, review from time to time the existing provisions of the Constitution and other laws affecting women and make recommendations to suggest remedial measures and take up the cases of violation of the provisions of the Constitution and other laws relating to women with the Government or appropriate authorities. Clause (f) of sub-section (1) of Section 10 specifically lays down that the Commission may entertain complaints and take suo moto notice of matters relating to the deprivation of women's rights, non-implementation of laws with respect to the protection of women, and non-compliance of policy decisions, guidelines or instructions aimed at mitigating hardships concerning the women etc. etc. Clause (f), therefore, merely empowers the Commission to entertain complaints and to take suo-moto notice with respect to the matters concerning the aforesaid subjects. Neither Clause (f) of sub-section (1) of Section 10 nor any other provision contained in Section 10 or elsewhere in 1996 Act suggests that apart from entertaining complaints and taking suo-moto notice of the aforesaid matters the Commission has any jurisdiction or power or authority to pass

any order or to issue any direction, much less passing an order which would be in the nature of determining civil rights of the parties or visiting any party with any civil wrong. In other words it can safely be said that no provision of the aforesaid Act clothe the commission with any power nor does it vest in it any jurisdiction or authority to issue any direction to any one or to pass any order against any one which will have the effect of causing any prejudice to any such person or visiting him with any civil wrong. The legislature has rightly not clothed the Commission with any such power because passing of any such order is in the exclusive domain of the civil and criminal Courts constituted and created under the relevant laws of the land, to name a few, Code of Civil Procedure, Code of Criminal Procedure and laws relating to maintenance etc. etc. and is in the realm of judicial exercise of power as well as judicial adjudication of such disputes and conflicting claim as well as counter claims of parties. The respondent No.2 Commission therefore has no jurisdiction and did not have any jurisdiction or authority to pass any such order. In passing the order dated 17.11.2003 and in issuing a direction qua respondent No.1 through the demi official letter dated 27.1.2004 respondent No.2 Commission has patently transgressed the limits imposed upon it by the aforesaid 1996 Act and has committed a patent illegality in violating the very basic right vested in the petitioner. Similarly, it also violated the provisions of 1996 Act by issuing the aforesaid uncalled for direction qua respondent No.1.

Coming to the case of respondent No.1 we equally have no hesitation in disapproving the act of respondent No.1

in mechanically translating the illegal action of respondent No.2 into passing a consequential order and issuing a consequential direction whereby a grave prejudice was caused against the petitioner resulting in the deduction of Rs.500/- from his monthly salary. A duty was cast upon respondent No.1, after it received the aforesaid uncalled for and illegal direction from respondent No.2 to find out, examine and decide whether any order issued by respondent No.2 had the force of law, whether respondent No.2 had any jurisdiction to pass any such order and whether any order passed by respondent No.2 had a binding effect and was liable to be implemented. Had respondent No.1 cared to examine and consider the aforesaid aspects it would have surely come to a conclusion that neither respondent No.2 had any jurisdiction to pass any such order or issue any such direction nor was any one under any obligation, legally or otherwise to implement any illegal or uncalled for order passed by respondent No.2. By the aforesaid act of respondent No.1, apart from prejudice having been caused to the petitioner, the petitioner has been driven to this avoidable litigation in this court.

For the aforesaid reasons, the impugned actions of respondent No.2 as well as respondent No.1 are hereby quashed and set aside. It is ordered and directed that whatever amount has been deducted from the salary of the petitioner by respondent No.1 shall be returned to him. Since the petitioner has been caused prejudice and since he has been driven to this avoidable litigation, we allow this petition by awarding him costs of Rs.2000/- which shall be paid to

him in equal shares by respondent No.2 as well as respondent No.1 within four weeks from today.

CMP No.601 of 2005

In view of the disposal of the main petition, this application is also disposed of and interim stay stands vacated forthwith.

(V. K. Gupta),
Chief Justice.

(Deepak Gupta),
Judge.

November 15, 2006
(R)